

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

OUIDA KING,

08 CV 03143

Plaintiff,

**VERIFIED ANSWER**

-against-

DEFENDANT DEMANDS  
TRIAL BY JURY

DEPARTMENT OF CORRECTIONAL SERVICES  
COMMISSIONER GLENN GOORDE, DEPARTMENT  
OF CORRECTIONAL SERVICES COMMISSIONER  
BRIAN FISHER, DEPARTMENT OF CORRECTIONAL  
SERVICES CHIEF MEDICAL OFFICER LESTER N.  
WRIGHT, SUPERINTENDENT OF BEACON GAIL S.  
THOMAS, SUPERINTENDENT OF BEDFORD HILLS  
ADA PEREZ, DR. JONATHON HOLDER, DR.  
JACQUELINE DUNBAR, NURSE BARBARA FERCO,  
"JOHN DOE" MEDICAL PROVIDERS #1-5 AT  
BEACON, "JOHN DOE" MEDICAL PROVIDERS #1-5  
AT BEDFORD HILLS, PUTNAM HOSPITAL CENTER,  
GAIL MURPHY, RPA-C, "JOHN DOE" 1-5 AT  
PUTNAM HOSPITAL,

Defendant.

Defendant, **GAIL MURPHY, RPA-C**, by her attorneys, GORDON & SILBER, P.C.,  
answering the plaintiff's Complaint, alleges, upon information and belief:

**FIRST:** Denies the allegations contained in paragraphs: "2", "56", "57", "58", "59",  
"60", "61(a-g)", "64", "69", "70", "71", "72", "77", "78", "79", "85", "86", "87", "94", "95",  
"96" and "97".

**SECOND:** Denies knowledge or information sufficient to form a belief as to  
paragraphs: "7", "8", "9", "10", "11", "12", "14", "15", "16", "20", "23", "24", "25", "26", "27",  
"28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43",

"44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "67", "68", "75", "89", "90" and "91".

**THIRD:** Denies upon information and belief and respectfully refers all questions of law and fact to judge and jury paragraphs: "1", "3", "4", "5", "6", "13", "17", "18", "19", "21", "22", "63", "66", "73", "74", "76", "81", "82", "84" and "92".

**FOURTH:** Repeats and reiterates each admission or denial heretofore made in response to paragraph: "62", "65", "80", "83", "88" and "93".

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

**FIFTH:** That any damages otherwise recoverable by the plaintiff shall be diminished in the proportion which the culpable conduct attributable to the claimant bears to the culpable conduct which caused the damages and/or injuries alleged.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

**SIXTH:** That the plaintiff lacks personal jurisdiction over the answering defendant in that service was not properly made as prescribed by statute.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

**SEVENTH:** That the answering defendant alleges the provisions of Public Health Law §2805-d with respect to the plaintiff's Complaint.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

**EIGHTH:** That in the event of any judgment or verdict on behalf of the plaintiff, the defendant is entitled to a set-off or verdict with respect to the amounts of any payments made to the plaintiff for medical and other expenses prior thereto.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

**NINTH:** That the within action is barred by the applicable Statute of Limitations.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

**TENTH:** That if the plaintiff secures judgment against the answering defendant, and if the answering defendant is found to be 50% or less liable, then judgment against the answering defendant for non-economic loss, as defined in Article 16 of the Civil Practice Law and Rules, can only be had against the answering defendant to the extent the answering defendant is found to be liable.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

**ELEVENTH:** The defendant pleads the provisions of Article 50 of the CPLR. That if plaintiff secures judgment against the answering defendant, then future damages as defined in Article 50-B of the CPLR shall be paid out in structured installments pursuant to Article 50-B of the CPLR.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE:**

**TWELFTH:** The Complaint fails to state a cause of action for punitive damages.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

**THIRTEENTH:** The Complaint fails to state a cause of action against GAIL MURPHY, RPA-C.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

**FOURTEENTH:** There are no viable Constitutional claims against GAIL MURPHY, RPA-C because she is not a "State actor".

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE:**

**FIFTEENTH:** There are no viable Constitutional claims against GAIL MURPHY, RPA-C because she did not act under color of State law.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE:**

**SIXTEENTH:** There are no viable Constitutional claims against GAIL MURPHY, RPA-C because she did not act with deliberate indifference to a serious medical need.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE:**

**SEVENTEENTH:** The treatment is privileged and GAIL MURPHY, RPA-C is entitled to immunity.

**WHEREFORE**, the answering defendant demands judgment dismissing the Complaint herein, together with costs, and further requests that, in the event that the plaintiff recovers, the relative responsibility of all defendants be determined and apportioned as amongst themselves.

Dated: New York, New York  
April 29, 2008

Yours, etc.

GORDON & SILBER, P.C.

By: Michael J. Laub (8385)

Michael J. Laub (MJL 8385)

Attorneys for Defendant

**GAIL MURPHY, RPA-C**

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TO: CYNTHIA CONTI-COOK, ESQ.  
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Department of Correctional Services  
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NYS Department of Correctional Services  
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Department of Correctional Services  
Commissioner Brian Fisher  
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Department of Correctional Services  
Medical Officer Lester N. Wright  
NYS Department of Correctional Services  
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Department of Correctional Services  
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Superintendent Ada Perez  
Bedford Hills Correctional Facility  
247 Harris Road  
Bedford Hills, New York 10507-2400

Dr. Jonathan Holder  
170 Maple Avenue  
White Plains, New York 10601

Dr. Jacqueline Dunbar  
786 Mamaroneck Avenue  
White Plains, New York 10605

Nurse Barbara Ferco  
Beacon Correctional Facility  
50 Camp Beacon Road  
Beacon, New York 12508-0780

Putnam Hospital Center  
670 Stoneleigh Avenue  
Carmel, New York 10512

VERIFICATION

STATE OF NEW YORK    )  
                                  ss.:  
COUNTY OF NEW YORK )

MICHAEL J. LAUB, being duly sworn, deposes and says:

That he is the attorney for the defendant, GAIL MURPHY, RPA-C, in the above entitled action. That he has read the forgoing **Answer** and knows the contents thereof, and upon information and belief, deponent believes the matters alleged therein to be true.

The reason this verification is made by deponent and not the defendant is that the defendant herein is in a county other than where your deponent's office is located.

The source of the deponent's information and the grounds of his belief are the communications, papers, reports and investigations contained in the file.



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MICHAEL J. LAUB

Sworn to before me this  
29<sup>th</sup> day of April, 2008

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Notary Public





